IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

vs.

HOWE SCALE COMPANY OF 1886 AND FAY-SHOLES COMPANY,
Respondents.

BRIEF FOR RESPONDENTS.

The United States Circuit Court of Appeals for the Second Circuit decided (Wallace, J., dissenting) that the petitioner, Wyckoff, Seamans & Benedict, was entitled to a decree as to the name "Remington," but unanimously declared that the arbitrary name "Rem-Sho" was not "sufficiently like Remington to be of itself a reasonable cause of confusion."

The sole purpose of the present petition is to secure a reversal of this decision of the Court of Appeals as to the name "Rem-Sho."

We submit that this petition should be denied and make answer to the reasons pressed upon this court in support of the petition in the order in which they are there presented:

(*a*) The only "conflict of decision" in this case, so far as the name "Rem-Sho" is concerned, results from the unanimous reversal of the trial judge by the Court of Appeals upon a question of fact. This is not the conflict of decision that inclines this court to the extraordinary

remedy of a writ of *certiorari*. (*Forsyth* v. *Hammond*, 166 U. S., 506.)

(*b*) The decision of the Circuit Court of Appeals as to the name "Rem-Sho" must be binding upon the present petitioner in the Illinois case and the decision of this court upon the question whether the use of the name "Rem-Sho" is in violation of the petitioner's rights is not needed "to prevent costly litigation and settle all questions of controversy between the parties to this action."

(*c*) This court has repeatedly held that "the peculiar gravity and general importance" of the question presented must determine whether a writ of *certiorari* shall or shall not issue. (*American Construction Co.* v. *Jacksonville R. R.*, 148 U. S., 372; Lau Ow Bew's case, 141 U. S., 583; *In re* Woods, 143 U. S., 202.) The amount of labor involved in the consideration of the question is of no moment.

(*d*) Whether or not the Court of Appeals erred in holding that the name "Rem-Sho" was not sufficiently like "Remington" to be likely to cause confusion, is immaterial, because, to use the language of this court in *American Construction Co.* v. *Jacksonville R. R.*, *supra*, "the error was one in the judicial determination of a case within the jurisdiction of that court, and neither so important in its immediate effect, nor so far-reaching in its consequences, as to warrant this court in undertaking to control the cause at this stage of the proceedings."

We submit that the petition should be denied.

AUSTEN G. FOX,
JAMES H. PEIRCE,
GEORGE P. FISHER, JR.,
WILLIAM H. DENNIS,
Attorneys and of Counsel for Respondents.